United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

74-1465

To be argued by
TAGGART D. ADAMS

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1465

AMERICAN IMAGE CORPORATION,
Plaintiff-Appellant,

—v.—

UNITED STATES POSTAL SERVICE and JOHN R. STRACHAN, Postmaster, New York, New York,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANTS-APPELLEES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

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AMERICAN IMAGE CORPORATION,
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Preliminary Statement

The plaintiff-appellant, American Image Corporation ("American Image") appeals from a judgment entered January 22, 1974 following an Opinion and Order of the Honorable Whitman Knapp, United States District Judge for the Southern District of New York, dated January 14, 1974, denying plaintiff's motion for summary judgment, granting the defendants' motion for summary judgment and dismissing the complaint.*

Shortly after the commencement of the action on August 15, 1973, plaintiff moved for summary judgment. No discovery was sought to be taken, nor did plaintiff at any

* Judge Knapp's opinion is reported at 370 F. Supp. 964 (S.D.N.Y. 1974).

time seek an evidentiary hearing in district court. The defendants agreed that summary judgment was appropriate and cross-moved to dismiss the complaint. Judge Knapp decided the case on the basis of the record submitted to him by the parties.

Statement of Facts

This suit arises out of an administrative proceeding commenced by the United States Postal Service pursuant to 39 U.S.C. § 3005.

Section 3005 reads in pertinent part as follows:

> *"False representations; lotteries*
>
> (a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which—
>
> (1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail to the sender appropriately marked as in violation of this section, if the person, or his representative, is first notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender, and
>
> (2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the order of either and provides for the return to the remitter of the sum named in the money order or postal note."

Pursuant to 39 U.S.C. § 3005 and regulations thereunder, 39 C.F.R. § 952, the Postal Service commenced an administrative proceeding on April 25, 1972 by filing a complaint against American Image (10a-11a)* alleging that American Image was engaged in conducting a scheme or device for obtaining money or property through the mails by means of false representations. *In the Matter of the Complaint Against American Image Corporation,* Postal Service Docket No. 1/81. Attached to this complaint, as an exhibit, was a copy of the advertising matter used by American Image to promote its product "Baby Face" (12a). Specifically, the complaint alleged that the advertising materials were false by "impliedly or expressly represent[ing] to the public in substance and effect" that the woman who used "Baby Face" would experience a rejuvenation of her physical appearance; that the use of "Baby Face" would prevent and eliminate signs of skin aging; and that "Baby Face" incorporated materially different and distinctive principles, techniques and ingredients from other beauty preparations.

In its answer to the administrative complaint, dated May 8, 1972, American Image admitted responsibility for the advertisement attached as an exhibit to the complaint (12a) and that it employed the mails in its business, but it denied the other allegations and affirmatively alleged:

> "that the advertising material attached to the complaint speaks for itself with respect to the representations actually made herein" (13a-14a).

Consistent with the applicable regulations, 39 C.F.R. § 952.3, on May 31, 1972 American Image and the Postal

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* Numerical references followed by the letter "a" are to pages in the Joint Appendix.

Service entered into a Compromise Agreement (15a-16a). In consideration for the suspension of further proceedings by the Postal Service under 39 U.S.C. § 3005, American Image agreed that the promotional activities and representations described in the complaint would be "permanently discontinued and abandoned and will not hereafter be resumed, directly or indirectly."

A "rider" was attached to the Compromise Agreement (16a) which specifically dealt with the problem of orders received subsequently as a result of the discontinued advertisement. This "rider" stated that such orders could be filled by American Image but that there should be included with the filled order a statement that "Baby Face" would not alter or reverse the natural aging process and would not remove or eradicate lines or wrinkles. The "rider" also called for a refund to be given to any purchaser who misconstrued the advertisement.

As a result of the filing of the Compromise Agreement on June 2, 1972, the administrative proceeding was terminated.

Approximately one year later, on June 19, 1973, the Postal Service filed a Petition for a Remedial Order (17a-20a) on the basis of an alleged breach of the Agreement by American Image. Attached to the Petition was a copy of a new advertisement promulgated by American Image promoting the same product, "Baby Face" (21a). The Petition alleged that American Image's new advertisement was a continuation of the representations which it had agreed to discontinue. The Petition, which was served on American Image, requested the issuance of an order pursuant to 39 U.S.C. § 3005 in accordance with the terms of the Compromise Agreement.

In its undated Answer to Petition, American Image made three points (22a-29a). First, it denied that its second advertisement breached the Compromise Agreement. Second, it contended that the representations contained in its second advertisement pertaining to "looking years younger and younger looking and smoother looking skin" were not false, and it requested an administrative determination on the falsity of these claims. Third, it requested oral argument if the Judicial Officer of the Postal Service deemed it necessary.

On July 19, 1973 a Judicial Officer of the Postal Service, having considered the Petition and Response, issued an opinion (30a-35a) finding that although the second advertisement contained some modification of the language contained in the first advertisement, the "thrust" of the first advertisement's representations was continued in the second. American Image's requests for oral argument and a hearing on the truth or falsity of the representations in the second advertisement were denied by the Judicial Officer because "[t]he Compromise Agreement has been so clearly violated in this respect that no useful purpose would be served by ordering a hearing in this matter" (32a). On the same day that he decided to grant the Petition, the Judicial Officer signed the remedial mail stop order (Postal Service Order 73-86) (36a).

Proceedings in the District Court

On August 15, 1973, four weeks after the entry of the mail stop order, American Image filed suit in the United States District Court for the Southern District of New York. The complaint alleged, in essence, that the Judicial Officer's order was not supported by substantial evidence of a breach of the Compromise Agreement; as relief, plaintiff sought an order enjoining the defendants from detaining mail addressed to American Image and from enforcing the order (2a-4a).

On September 26, 1973 American Image moved for summary judgment based upon the affidavit of its President, Martin Schere (5a-9a), and the administrative record before the Postal Service. The defendants opposed this motion and cross-moved for summary judgment dismissing the complaint based upon the same record.

Judge Knapp heard oral argument on both motions and requested counsel for the parties to advise him of their positions as to the scope of his review. In subsequent letters to the Judge both counsel agreed that the Court could properly review the evidence before the Postal Service Judicial Officer on a *de novo* basis.*

Statement of Issues

Was the District Court correct in holding that:

(1) American Image's second advertisement breached the Compromise Agreement?

(2) it should view the evidence *de novo,* without construing the Compromise Agreement strictly against the interest of the Postal Service?

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* Neither letter is included in the Record on Appeal; however reference to counsels' position is made by Judge Knapp in his opinion (41a).

ARGUMENT

POINT I

The District Court was correct in finding that publication of the second advertisement was a breach of the compromise agreement.

A. The Two Advertisements and The Compromise Agreement.

The substantive question facing the District Court was whether American Image's second advertisement for "Baby Face" violated the Compromise Agreement of May 1972. The Compromise Agreement specifically stated that a "breach of this Agreement . . . will warrant the issuance of an order pursuant to [39 U.S.C. § 3005] . . ."

In attacking the issuance of the Remedial Order by the Judicial Officer and seeking to enjoin its enforcement, American Image, before both the Judicial Officer and the District Court as well as in its brief on appeal, has gone to great lengths to pinpoint the differences between its first and second advertisements. These differences, however, are so insubstantial that there can be no doubt that the District Court was correct in holding that the second advertisement did breach the Compromise Agreement.

The Postal Service has conceded from the outset that the second advertisement was not identical with the first (32a, 42a). Nevertheless, such variations as do exist are so immaterial that both the Judicial Officer and Judge Knapp found specifically that the thrust of the new advertisement was the same as the old.

With respect to the differences between the first and second advertisements, the District Court correctly con-

sidered them "with an eye to their over-all effect upon the average reader" and not upon the minds of the exceptionally acute or sophisticated. *Donaldson* v. *Read*, 333 U.S. 178, 188-189 (1948).

In considering advertisements such as those at issue here it is wise to recall that:

> "The meaning and impression upon the mind of the reader arises from the sum total of not only what is said but also of all that is reasonably implied". *Spiegel* v. *F.T.C.*, 411 F.2d 481, 483 (7th Cir. 1969). (Quoting *Aronberg* v. *F.T.C.*, 132 F.2d 165, 167 (7th Cir. (1942));

and

> "regard must be had, not to fine spun distinctions and arguments that may be made in excuse, but to the effect which such representations might reasonably be expected to have upon the general public". *United States Retail Credit Assoc. Inc.* v. *F.T.C.*, 300 F.2d 212, 219 (4th Cir. 1962).

Nor should advertisements be judged on the basis of "scholarly dissection in a college classroom". *Colgate-Palmolive Co.* v. *F.T.C.*, 310 F.2d 89, 91 (1st Cir. 1962).

Courts confronted with claimed breaches of orders barring particular commercial representations have uniformly followed this common sense course. In *United States* v. *Vulcanized Rubber and Plastics Co.*, 288 F.2d 257 (3rd Cir.), *cert. denied*, 368 U.S. 821 (1961), it was held that to label a product "rubber resin" was a violation of a Federal Trade Commission Cease and Desist Order prohibiting the representations "directly or by implication" of a product as "rubber" or "hard rubber" unless made of vulcanized hard rubber. Similarly, in *United States* v. *Piuma*, 40 F. Supp. 119 (S.D. Cal. 1941), *aff'd*, 126 F.2d 601 (9th Cir.), *cert. denied*, 317 U.S. 637 (1942), it was held that to represent a product as a "gland Tablet" which was "one of the best" was a violation of an F.T.C. Cease and Desist

Order proscribing the advertising of a "gland tonic" described as "the best". *Piuma* is especially pertinent here because the District Court found that while the precise words and phrases prohibited by the Cease and Desist Order did not appear in the new advertisement, the new advertisement did not materially change the original representations and was, therefore, a violation of the Order.

American Image contends that the removal of a very few words and the substitution of one word for another in two or three instances in its second "Baby Face" advertisement takes it outside the scope of the Compromise Agreement. However, as is pointed out in *Piuma* and *Vulcanized Rubber*, immaterial alterations are not sufficient to frustrate efforts to protect the public interest.

A visual comparison between the two advertisements (37a) substantiates the findings of the Judicial Officer and the District Court. The initial impressions conveyed are nearly identical. Both ads contain "before and after" photographs, the latter of which represent women whose faces appear largely free of wrinkles and lines, presumably as a result of the use of the "Baby Face" formula. Both ads attribute to the pictured woman statements similarly extolling the alleged virtues of "Baby Face" in large, eye-catching letters. Both ads "guarantee" that the user will look younger after using "Baby Face".

A word-by-word analysis can only strengthen this conclusion. Although the second advertisement does not quote the pictured woman as looking "20 YEARS YOUNGER" but only "YEARS YOUNGER", the alteration is insignificant since the impression given jointly by the statement and the photographs are virtually identical in both advertisements. The omission of "20" simply makes the quotation slightly less precise without detracting a whit from its meaning or implication.

The second advertisement removed the phrase "rejuvenated my facial glands and skin tissues" and substituted "softened and smoothed out my skin tissues". This change was obviously in response to the initial Postal Service complaint which alleged that "Baby Face" falsely represented that it rejuvenates glands. However, the third sentence specified in Paragraph 3a of the original Postal Service complaint, as indicative of the nature of plaintiff's representations, *i.e.,*

> "Yes! This is my unbelievable story of how 'I' a 50 year old woman . . . transformed herself into a radiant woman who looked years younger!"

remains completely unaltered in the second advertisement.

In fact, the types of representations specified in Paragraph 3a of the complaint are in some measure expanded in the second advertisement. Paragraph 3a was directed toward representations that the user of "Baby Face" would experience a *rejuvenation of her physical appearance.* To rejuvenate means to make young or youthful. See Webster's Seventh New Collegiate Dictionary (1963) p. 723. In the second advertisement the following representations are made:

> "looked years younger" (twice)
> "looks years younger"
> "appear years younger"
> "new youth look"
> "restore that fresh youthful appearance"

Thus, while the precise wosd "rejuvenate" has been eliminated, its meaning in the context of the first advertisement most certainly remains in the second and, in fact, has been embellished by a new reference in the second advertisement to the "Fountain of Youth". In fact, the word "youth" or a derivation thereof is used fourteen times in the second advertisement as compared to nine such references in the first.

It is also clear that the nature of representations complained of in Paragraph 3b of the complaint and thus agreed to be terminated are, in fact, continued in the new advertisement: *i.e.,* that "Baby Face" would prevent and eliminate wrinkles. In the Postal Service complaint three examples were given to illustrate the nature of these representations. Two of the precise examples were eliminated in the new advertisement. With respect to the third example, the phrase "lines seemed to disappear" was changed to "lines seemed to fade from view". American Image contends that "disappear" and "fade" are not synonymous (Appellant's Br. 8); but regardless of the merit in that semantic distinction, the relevant phrase which was substituted for "disappear" was "fade from view" which, in conjunction with the before and after pictures showing less facial lines, conveys the same meaning as "disappear". (Cf. Webster's Seventh New Collegiate Dictionary, (1963) p. 236, where "disappear" is defined, *inter alia,* as to pass from view).

In addition, the second advertisement retains the statement that the featured woman's husband watched "this change with disbelief. Facial lines, 'crows feet' and my flabby chin lines and puffy cheeks smoothed almost before my eyes" (21a). Since the husband would presumably see his wife without makeup and without the intervention of a photographer's lens, the second advertisement also strongly implies that lines were disappearing and not merely being covered.

The purpose of 39 U.S.C. § 3005 is to protect the public from injury from mail-order promoters engaged in a fraudulent scheme. *Donaldson* v. *Read, supra.* Here, the Postal Service entered into an Agreement by which it stayed its administrative remedies in return for an American Image's promise that it would refrain from making specified representations about "Baby Face", either "directly or indirectly".

American Image seeks to frustrate completely the clear intent of the Compromise Agreement by playing insignificant word games with its original advertisement. Having found, however, that "the thrust of the new ad with respect to the three false representations is the same as that of the old" (43a) the District Court properly concluded that the Compromise Agreement had been breached. If the District Court's finding in this regard is not upheld, then any promoter subject to a remedial or litigated mail stop order could frustrate the statutory scheme by the artful rearrangement or restatement of its prohibited representations.

B. The "Rider".

American Image contends that the "Rider" to the Compromise Agreement (16a) evidences the intent of the agreement to permit the continued sale of "Baby Face".* It is further contended that since the Rider did not require specific disclaimers as to certain types of representations, those representations were implicitly excluded from the scope of the Agreement.

This tortured interpretation of the Compromise Agreement violates common sense as well as logic. The purpose of the Rider was clearly to provide a specific solution

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* The affidavit of Martin Schere, President of American Image, presented on the motion for summary judgment (5a-9a), contains the statement that American Image would not have entered into the Compromise Agreement if he had known that the representations contained in the second advertisement would be deemed included in the prohibitions of the Agreement. This conclusory statement, made *post facto*, should not bear upon the construction of the "Rider", which on its face does not relate to future advertisements. If Mr. Schere had such intentions they should have been reflected in the words of the Agreement which "was entered into after negotiation and discussion between the parties" (28a).

to a narrow problem: *i.e.*, the treatment of purchase orders received subsequent to the filing of the Agreement which were remitted in response to the first advertisement. Nothing in the Rider or in the Compromise Agreement lends any support to the argument that the Rider was designed to modify the provisions of the Agreement.

POINT II

The District Court properly determined all the relevant issues and employed a correct standard of review.

American Image contends that the District Court employed an incorrect standard of review when it made reference in its opinion to comparisons between the first and second advertisements:

> "Simply stated — appellant's new advertisement should be read on its own merits and not in a comparison with its old advertisement" (Appellant's Br. 11-12).

This argument exposes appellants' basic misconception of the nature of this litigation, which does not involve questions of whether the second advertisement has been proven to be false and misleading but only whether the second advertisement is in breach of the Compromise Agreement. Since the Agreement incorporates by reference the first advertisement and the allegations of the Administrative Complaint pertaining to that first advertisement, the proper interpretation of the Agreement must be based on the relationship between the first advertisement and the second advertisement.

American Image also contends (Appellant's Br. 14-17) that the District Court should have used a standard of review even more favorable to it in construing the Compromise Agreement, because of the absence of any Postal Service procedures by which an advertiser can receive advance clearance for advertisements relating to promotions already subject to mail stop orders.

The answer to the American Image argument is founded in part in the philosophy expressed by Chief Justice Warren, writing for the majority in *F.T.C.* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 393 (1965):

> "If respondents in their subsequent commercials attempt to come as close to the line of misrepresentation as the Commission's order permits, they may without specifically intending to do so cross into the area proscribed by this order. However, it does not seem 'unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line' *Boyce Motor Lines, Inc.* v. *United States*, 342 U.S. 337, 340."

Furthermore, the argument of American Image is particularly unsuitable in the context of this action and Postal Service proceedings in general. The rule of law set forth in 39 U.S.C. § 3005 provides no trap for the unwary. To the contrary, its prohibitions are straightforward. The Compromise Agreement at issue here is simply drafted and certainly as precise as circumstances permit. See *F.T.C.* v. *Colgate-Palmolive, supra.* In addition, the Compromise Agreement was just that—an agreement—not an order imposed upon American Image. As stated by counsel for American Image (27a-28a) it was entered into after negotiations and discussion between the parties as to its scope. In addition to the fact that no pre-publication review procedure exists by virtue of Postal Service statutes or regulations, such a procedure is neither necessary nor justifiable in this context.

In addition, appellant's argument for a "strict standard of construction" is contrary to the basic purpose of the statute and Compromise Agreement. *Donaldson* v. *Read, supra.* In *Lynch* v. *Blount,* 330 F. Supp. 689, 693 (S.D.N.Y. 1971) (three judge court), *aff'd* 404 U.S. 1007 (1972), Judge Medina recognized that the policy in favor of public protection might even result in the commercial demise of some enterprises. It must be recalled that the purpose of the Act is to protect the unwary, the unsuspecting and the trusting elements of society. *N. Van Dyne Advertising Agency* v. *United States Postal Service,* 371 F. Supp. 1373 (S.D.N.Y. 1974).

Moreover, the Court employed the standard of review sought by American Image—the standard most favorable to it—when the entire record was considered *de novo* without giving weight to the findings of the Judicial Officer (41a).

Indeed, in most cases in which the findings of the Judicial Officer of the Postal Service have been reviewed, the findings have been upheld except where they were not supported by substantial evidence, viewing the administrative record in its entirety.* *Vibra Brush Corp.* v. *Schaffer,* 152 F. Supp. 461 (S.D.N.Y. 1957), *vacated and remanded on other ground,* 256 F.2d 681 (2d Cir. 1958); *United States* v. *International Term Papers, Inc.,* 477 F.2d 1277, 1279 (1st Cir. 1973); *Stein's* v. *Pilling,* 256 F. Supp. 238, 243 (D.N.J. 1966), *aff'd,* 379 F.2d 554 (3d Cir. 1967). Judge Weinfeld has observed that "[t]he power vested in the Postmaster General 'upon evidence satisfactory to him' to deny the use of the mails to those engaged in fraudulent claims may not be interfered with by the courts unless the executive has exceeded his authority or is palpably wrong" (footnote omitted). *Vibra Brush Corp.* v. *Schaffer,*

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* Indeed, "substantial evidence" was the test originally urged in the District Court by American Image (3a).

supra. But where the Judicial Officer has attempted to construe an advertisement rather than weigh testimony with respect to a product's efficacy, courts accord no special deference to the views of the Judicial Officer. *Gottlieb* v. *Schaffer*, 141 F. Supp. 7, 16 (S.D.N.Y. 1956) (love potions); *Vibra Brush Corp.* v. *Schaffer, supra* (baldness cure). If Judge Knapp committed error, and the Postal Service does not so contend, it was in adopting an evidentiary standard unnecessarily *favorable* to American Image. Of course, if Judge Knapp should have applied the "substantial evidence" test, his decision to review the evidence *de novo* was harmless error, in view of the outcome of the case. Rule 61, F.R. Civ. P.

American Image submits no evidence that Judge Knapp employed a "loose" rather than a "strict" standard in interpreting the Compromise Agreement. Indeed, in finding that "[t]he implication is plain that users will enjoy the same result" (43a) there is ample reason to believe that the Court found the second advertisement to be a breach of the Compromise Agreement under any standard.

The District Court also properly determined all the issues relevant to this litigation in its opinion granting the motion of the defendants for summary judgment. Unlike *United States* v. *J. B. Williams Company, Inc.*, — F.2d — (2d Cir., decided May 2, 1974) (slip op. 3147), the District Court's ruling here was prompted by *plaintiff's* motion for summary judgment. There, the Court of appeals reversed in part the granting of summary judgment in favor of the Government because J. B. Williams had presented triable issues with regard to the meaning of its Geritol commercials. Here, by contrast, American Image conceded that its advertising material "speaks for itself" (13a-14a).

Also, unlike J. B. Williams, which unsuccessfully sought to have a jury trial on the question of its alleged violations

of a Federal Trade Commission cease-and-desist order, American Image did not make a jury demand in the instant case. Furthermore, since the relief sought was purely equitable (an injunction against the mail stop order), the case had to be considered by the Court sitting without a jury.

At no time did American Image raise a relevant issue for which a trial-type proceeding would have been appropriate. In arguing at the administrative level that a Remedial Order should not be issued by the Judicial Officer, American Image attempted to interject the issue of the truth or falsity of the representations contained in its second advertisement as well as those of the entire cosmetic industry (Answer to Petition 22a-29a). A hearing on this issue was properly denied by the Judicial Officer (33a) because it was not in any way germane. The Compromise Agreement specifically states that it:

> "is for settlement purposes only and does not constitute an admission by the undersigned of a violation of § [3005]" . . .

The Agreement was not based on a finding that the first advertisement was false or fraudulent; therefore to establish that the second advertisement was not false or fraudulent would not have disproved the Postal Service's allegation that the Agreement had been violated. The precise argument raised by American Image here was considered and rejected in *United States Bio-Genics Corp.* v. *Christenberry,* 173 F. Supp. 645 (S.D.N.Y.), *aff'd on the opinion below,* 278 F.2d 561 (2d Cir. 1960). See also *United States* v. *Vitasafe Corp.,* 212 F. Supp. 397 (S.D.N.Y. 1962). As stated by Judge Knapp in his opinion (44a), if appellant wished to prove the validity of its cosmetic claims, it perhaps should not have waived its right to a hearing on the allegations contained in the first Postal Service complaint in 1972.

In its motion for summary judgment before the District Court, American Image submitted the full administrative record of the proceedings before the Postal Service. It did not ask for a trial and no proferred evidence was excluded. No additional evidence was submitted by the defendants. Thus, all the evidence necessary to determine the matter at issue, i.e., whether the second advertisement was a breach of the Compromise Agreement, was before the Court. The actual words and pictures contained in the advertisements were not subject to dispute. See, American Image ~~has been~~ consent to Postal Service complaint, 14a. Under these circumstances the Court could and did properly resolve the issue by granting summary judgment. Alternatively, even if summary judgment were inappropriate, what transpired before Judge Knapp was the equivalent of a trial following which a directed verdict was entered for the Postal Service. The evidence amply supported such a result. See, *United States* v. *J. B. Williams Company, Inc., supra,* Slip Op. at 3177.

CONCLUSION

The judgment of the District Court should be affirmed.

July 10, 1974

Respectfully submitted,

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★ U. S. Government Printing Office 1974— 614—204—044—74

Form 280 A-Affidavit of Service by Mail
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74-0883
CA 74-1465

AFFIDAVIT OF MAILING

State of New York)
County of New York) ss

Pauline Troia, being duly sworn, deposes and says that she is employed in the Office of the United States Attorney for the Southern District of New York.

That on the 16th day of July 1974 she served 2 copies of the within govt's brief

by placing the same in a properly postpaid franked envelope addressed:

Bass & Ullman, Esq.,
342 Madison Ave.
New York, NY 10017

And deponent further says she sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.

Pauline Troia

Sworn to before me this
16th day of July 19 74

Lynwood Hayes

LYNWOOD HAYES
Notary Public, State of New York
No. 41-1720825
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1975